

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Mark Johnson,
Plaintiff

v.

Case No. 1:10-cv-938

Sitwell's Coffee House,
Defendant

ORDER

This matter is before the Court on the Magistrate Judge's Report and Recommendation filed December 30, 2010 (Doc. 4).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). As of the date of this Order, no objections to the Magistrate Judge's Report and Recommendation have been filed.

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, we find the Magistrate Judge's Report and Recommendation correct.

Accordingly, it is **ORDERED** that the Report and Recommendation of the Magistrate Judge is hereby **ADOPTED**. Plaintiff's complaint is **DISMISSED** for failure to state a claim upon which relief can be granted.

This Court certifies that pursuant to 28 U.S.C. § 1915(a) an appeal of this Order would not be taken in good faith, and therefore DENIES plaintiff leave to appeal *in forma pauperis*. Plaintiff remains free to apply to proceed *in forma pauperis* in the Court of Appeals. *See Callihan v. Schneider*, 178 F.3d 800, 803 (6th Cir. 1999), overruling in part *Floyd v. United States Postal Serv.*, F.3d 274, 277 (6th Cir. 1997).

Date: January 26, 2011

s/Sandra S. Beckwith
Sandra S. Beckwith, Senior Judge
United States District Court